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May 12, 2020

Dear Members of the Senate Labor Committee:

**RE: Please Support S-2380 (Sweeney / Singer / Greenstein):
Concerns the “Burden of Proof” & Reforms the Workers Compensation System for
Essential Workers Infected by the Coronavirus at their Place of Employment**

The New Jersey State AFL-CIO respectfully asks for your support of this critical legislation and thanks the sponsors for their leadership on this issue.

It seems everywhere we turn in the media during the COVID-19 pandemic, we hear about the bravery of our “essential employees.” Large corporations run television ads praising them. Politicians make speeches expressing their gratitude. However, behind every speech and every ad, there is a human cost – and often human suffering – behind that label of “essential.” Furthermore, there is often a financial loss these workers suffer as well.

This bill seeks to address one specific provision in our workers compensation system that must be reformed to reflect coronavirus infections. The issue of “presumption,” often referred to as the “burden of proof,” currently requires workers to prove that they were injured (or infected) at their place of employment. For many physical accidents, this “burden of proof” is not a burden at all for workers and can be easily documented for a workers compensation claim. However, for occupational diseases or infection, the “burden of proof” requirement often results in workers being denied workers compensation coverage because the employer requires the worker to identify how they contracted the virus at work.

For example, how does a nurse who is working a 12-hour shift at a hospital in close proximity of COVID-infected patients prove that he or she contracted COVID at the hospital, rather than, for example, walking their dog after work? They can't. It's impossible. That is why this bill is necessary.

We are being advised by union representatives and workers compensation attorneys that the “burden of proof” requirement is being used to deny essential employees workers compensation. Just this week, an attorney advised us of a full-time Health Unit Coordinator who works in a hospital in Monmouth County near the COVID unit. This employee's COVID test came back positive on April 15. The employee was out of work for 7 days, which were unpaid, and on April 24, the worker received a call from HR and was told that her situation was being sent to workers compensation. On April 27, she was told that workers compensation denied her claim and that she could have gotten it from the grocery store or gas station. The employee did not receive any paperwork regarding her denial.

“The Voice for Working Families in New Jersey”

This case illustrates the “human cost” of being an “essential” employee. Not only was this worker made ill due to her profession, but now she is enduring a financial hardship as well. Meanwhile, a worker deemed “non-essential” is sheltering in place, collecting unemployment insurance, plus an additional \$600 per week, and is not placing their health at risk. This is not justice for our frontline workers fighting to defeat the COVID-19. It must be corrected via this legislation.

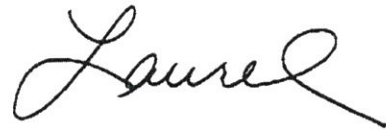
Several states (detailed below) have already enacted legislation or passed Executive Orders in various forms addressing the presumption issue. Just last week, California Governor Newsome issued Executive Order 62-20 that addressed the presumption issue just as this legislation seeks to accomplish.

Thank you very much for your attention to this matter. The New Jersey State AFL-CIO respectfully asks for your support of this legislation that seeks to protect the frontline workers that are protecting us during the coronavirus pandemic.

Sincerely,



Charles Wowkanech
President



Laurel Brennan
Secretary-Treasurer

CW:LB:jmn
OPEIU:153

States where legislation has passed:

Alaska: Senate Bill 241 included an amendment to the state workers comp law that establishes a presumption for COVID-19 as an occupational disease for first responders and healthcare providers. Signed by the Governor on April 9, 2020.

<http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF>

Provision: “an employee who contracts the novel coronavirus disease (COVID-19) is conclusively presumed to have contracted an occupational disease arising out of and in the course of employment (if the worker) is employed as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider (and) is exposed to COVID-19 in the course of employment” and is diagnosed by a physician by way of either a “presumptive positive COVID-19 test result” or a “laboratory-confirmed COVID-19 diagnosis.”

Minnesota: On April 14, 2020, Governor Tim Walz signed H.F. 4537 which establishes presumptive causation for emergency first responders and frontline workers unless the employer is able to prove the infection happened elsewhere.

<https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/72/>

Pennsylvania: Legislation passed to cover COVID-19 exposure for police, firefighters and correctional officers.

Utah: Passed by legislature, to governor for signature April 22, 2020; only applies to first responders. Not yet signed into law (as of April 28, 2020). Creates a rebuttable presumption.

Wisconsin: A bill was passed and signed into law – created presumed causation if the public safety employee can show an on-the-job exposure to COVID-19 but with last minute amendments, questions arose as to precisely what employee needs to prove – the governor has announced support for corrective legislation.

<https://docs.legis.wisconsin.gov/2019/related/acts/185>

Presumption Established through Executive Order

Kentucky

https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf

By Executive Order on April 9, 2020, Governor Brahear provided relief through protection under Workers Compensation for Kentuckians who “because of the nature of their employment, are at risk of being exposed to or contracting COVID-19”. The order provides that employees who are removed from work by a physician due to exposure to COVID-19 will be entitled to temporary total disability payments during period of removal. For the following employees, it will be presumed that the removal is due to occupational exposure to COVID-19: Employees of a healthcare entity, first responders (law enforcement, emergency medical services, fire departments), corrections officers; military; activated National Guard; domestic violence shelter workers, child advocacy workers; rape crisis center staff; Department for Community Based Services workers; grocery workers, postal service workers; child care workers permitted by Cabinet for Health and Family Services to provide child care in a limited duration center during the State of Emergency.